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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Debra Dreisbach

**File:** B-261141

**Date:** November 9, 1995

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## DIGEST

An employee on a temporary duty assignment had a government-owned car, which had broken down, towed to a car dealership. The dealership arranged for the employee to use a rental car provided through its contract with a local car rental agency. Based on advice given to her by her supervisor, the employee purchased collision damage waiver insurance and now seeks reimbursement. The claim may not be paid. The Federal Travel Regulation expressly prohibits reimbursement to employees for such insurance. The erroneous advice of an agency official may not serve as the basis of a claim otherwise prohibited by law.

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## DECISION

The United States Department of Agriculture asks whether Special Agent Debra Dreisbach may be reimbursed for the cost of insurance she purchased incident to renting a vehicle while on official business. She may not.

## BACKGROUND

On June 20, 1994, Ms. Dreisbach was returning from a temporary duty assignment in New Jersey to her official duty station in Hyattsville, Maryland, when the General Services Administration (GSA) vehicle to which she was assigned broke down outside of Philadelphia, Pennsylvania. She called her supervisor, who instructed her to call GSA, which advised her to have the car towed to Pacifico Ford in Philadelphia for repair. After doing so, her agency arranged for her to pick up another GSA car at the agency's King of Prussia, Pennsylvania office.

On July 11, 1994, Ms. Dreisbach was required to return the GSA vehicle to the King of Prussia office. Pacifico Ford then offered to provide a rental vehicle to Ms. Dreisbach at no cost until her assigned vehicle could be repaired.

Pacifico arranged for this vehicle through its contract with Enterprise Rent-A-Car, which also has a contract with the government. Enterprise's contract with Pacifico

established a daily rental rate of \$21 and did not include any collision damage waiver insurance. Enterprise's government contract uses a daily rate of \$29. However, under the government's contract, Enterprise assumes liability for damages to its vehicles caused by a government employee.

The Enterprise employee who assisted Ms. Dreisbach informed her that if she accepted the vehicle that Pacifico offered to rent, her personal insurance would be liable for any damage to the car unless she purchased additional insurance herself at a rate of about \$10 a day. Ms. Dreisbach telephoned her supervisor, who advised her to purchase the insurance, which she did. Ms. Dreisbach used the rental car until August 11, 1994, and accrued costs for the insurance of \$416.88.

As a matter of general policy, the government is self-insured. Accordingly, our decisions and the Federal Travel Regulation (FTR), which are discussed below, explicitly prohibit reimbursement for collision damage waiver insurance. The agency is aware of this prohibition, but questions whether the facts of this case justify an exception.

The agency notes first the insurance was not purchased for a government-rented vehicle, but rather for a vehicle rented by a third-party, Pacifico Ford. Under these conditions, it asserts, the normal liability protection offered by the Federal Tort Claims Act (FTCA) would be doubtful. Furthermore, the agency notes that, although Ms. Dreisbach could have arranged to have the agency rent the vehicle under the government's contract, this would have cost the agency more than simply paying separately for the insurance for the car rented by Pacifico Ford.

## OPINION

As we noted above, the government is self-insured. Specifically with regard to the type of insurance involved here, the rule is that in the absence of express statutory authority to the contrary, appropriated funds are not available for the purchase of insurance to cover loss or damage to government property or the liability of government employees. See B-158766, Feb. 3, 1977.

The Federal Travel Regulation expressly states "Agencies may not pay or reimburse an employee for collision damage waiver or collision damage insurance when official travel in the rental vehicle is performed" in the United States and its territories and possessions. 41 C.F.R. § 301-3.2(c)(1).

Erroneous advice may not form the basis for payment of a claim otherwise barred by law. Karla Heerman, B-260861, Aug. 8, 1995, and cases cited therein. Accordingly, we have denied reimbursement for collision damage waiver insurance even when the employee's supervisor advised the employee to purchase the

insurance. Gene R. Campbell and Marvin Douglas, B-181187; B-181180, June 27, 1974.

Finally, although we are not aware of FTCA cases involving vehicles rented by third parties, as in this case, we note that coverage under the act is not determined by the status of the vehicle, but rather, by the status of the employee. Specifically, we believe that the dispositive factor is whether or not the employee is "acting within the scope of his office or employment . . . ." 28 U.S.C. § 2679.

However, even if Ms. Dreisbach was not covered by the FTCA, it does not follow that she is entitled to have the government reimburse her insurance costs. It was precisely to avoid such costs that the FTR provision noted above was adopted.

Accordingly, the claim may not be paid.

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel